IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.5390 of 2007

Date of Decision: October 18, 2007

Raj Kumar .....Petitioner

Versus

Kishan Chand and another .....Respondents

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.Anil Chawla, Advocate for the petitioner.

S. D. ANAND, J.

1. Respondent-landlords filed an ejectment plea against the petitioner-tenant which (ejectment plea) came to be allowed ex parte vide order dated 18.4.2003. In those proceedings, a counsel had entered appearance on behalf of the petitioner but he absented thereafter and the petition came to be allowed ex parte. Thereafter, the petitioner-tenant filed a plea (under Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure) for the setting aside of the ex parte order dated 18.4.2003 which too came to be rejected on 22.3.2007.

2. Learned counsel for the petitioner argues that the impugned order deserves to be invalidated inasmuch as the petitioner could not appear on all dates of hearing as he was in job and elder son of his was mentally unstable. It is also the plea that the dereliction was on the part of the learned counsel (representing the petitioner before the learned Rent

Controller) who did not attend the Court and who also did not intimate the ex parte disposal of the petition.

3. The learned Rent Controller recorded a finding that the allegedly mentally unstable son of the petitioner-tenant is a student of B.Sc. No doctor was examined to prove that the elder son of the petitioner-tenant was mentally unstable. The mere production of medical certification to the effect was not held to be adequate in support of the plea in the relevant behalf. Further, it is in evidence that the petitioner has another son who also works with the petitioner himself at his place of job. The petitioner was categorical in averring that he would always leave for his job at 10.00 A.M. and return in the evening. The petitioner did not examine the learned counsel who had been representing him earlier at the trial. Furthermore, the petitioner conceded, in the course of cross-examination, that he was telephonically in touch with the learned counsel about the proceedings of the case. He also conceded that the residence of the learned counsel representing him at the trial was at a walking distance from his residence.

4. In the circumstances of the case, the learned Court came to a just conclusion (about the petitioner not having been able to prove any sufficient ground for the setting aside of the impugned ex parte decree) which cannot be faulted with in any manner.

5. Dismissed in limine.

(S. D. ANAND)
JUDGE

October 18, 2007
SRM

Note: Whether referred to reporter ? Yes/No